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RR RUEHWEB

DE RUEHSN #1887/01 2091645  
ZNR UUUUU ZZH  
R 281645Z JUL 06  
FM AMEMBASSY SAN SALVADOR  
TO SECSTATE WASHDC 3245

UNCLAS SAN SALVADOR 001887

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INFO DEPT EPA WASHDC

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E.O. 12958: N/A

TAGS: [ECON](#) [ENRG](#) [EAGR](#) [SENV](#) [ES](#)

SUBJECT: THE GOES PUSHES FOR A CHANGE IN WATER LEGISLATION

¶1. SUMMARY: The Salvadoran Ministry of Environment presented to Embassy officials a review of a draft Water Law to be submitted to the Assembly later this year. This new law would represent an important change in the management of water in El Salvador. The government-owned water utility (ANDA) is currently responsible for regulating and distributing water in the entire country. The new legislation will create an independent water regulator (CONAGUA), and ANDA will remain only as a distributor for certain areas. The law will include charges for the extraction of raw water and allows for concessions and permits for water use. The Salvadoran Ecological Unit (UNES), an environmental NGO also presented a Water Law proposal to the Assembly. The spirit of their proposal focuses on the conservation of water resources and limits any kind of privatization. END SUMMARY.

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GOES WATER LAW PROPOSAL  
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¶2. The GOES through the Ministry of the Environment (MARN) has been working for several months on a draft Water Law that would significantly change the current water management model for El Salvador. MARN Executive Director Roberto Bara told Econ Officer that the Water Law would be the most progressive and modern in Latin America, establishing institutions for better and more integrated management of water resources. The Water Law will establish guidance for the quantity and quality of water use between the central government, industry, and the public. It is important to note that the Water Law will not regulate water services such as drinking water, agricultural irrigation, electricity generation, or industrial and tourism use; a separate legal framework must be developed to complement the new law. Currently there are several water laws serving different institutions (CEL, MAG, ANDA) which cause confusion and contradiction. ANDA currently acts as a distributor rather than a regulator.

¶3. The Law envisions the creation of several institutions to manage water on a country-wide basis. The GOES will create an autonomous body, the National Water Commission (CONAGUA), to enforce the new Water Law. CONAGUA will be responsible for the planning, control, facilitation and supervision of water management. CONAGUA will charge fees for the use of water, depending on the type of water and end use. These fees will be paid into a water fund, FOAGUA, and be used for administrative purposes, as well as to pay local and national, public and private entities to carry out water management, conservation, and treatment. A system of sanctions, fines, and incentives will also be used to promote conservation. The law will favor incentives over sanctions and these will be financed through FOAGUA and/or through the concession process. CONAGUA will have the ultimate responsibility to investigate, resolve, and sanction/reward all water use in the country.

¶4. CONAGUA will have a presence country-wide through decentralized operations in three Watershed Zonal Organizations, each comprised of a Technical Committee and Watershed Committees. The Watershed Committees will supervise the water usage and compliance with regulations (to be drafted) for water service. The law also

envisions inclusion of End User Organizations in the Watershed Committees, composed of private organizations such as NGOs that will scrutinize the control and supervision of water distribution within their area of influence. Issues relating to water resources from rivers and water tables shared with other countries will be defined through regulations to this law. Comment. An issue here is the centralized water fund FOAGUA. Businesses may be reluctant to pay into a fund that may or may not address specific conservation needs related to the water source they are using. End Comment.

15. The President of CONAGUA will be appointed by the President of El Salvador. CONAGUA will have representation from the Ministries of Governance, Finance, Economy, Agriculture and Livestock, Public Health, Public Works, Environment, the Superintendent of Telecommunications and Electricity, the office of the Technical Secretary to the President and a representative for each of the

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three watershed zones in the country.

16. The proposed law includes a series of instruments that will enable CONAGUA to plan at a national and regional level, create water inventories, and establish information systems. Through the Law, the GOES commits to public participation and to respond to civil society through the End User Organizations. The GOES has not yet presented their proposal to the Legislative Assembly and it is very likely they will not do so until late in the year; first they have to finish the discussions with state owned power generation company, CEL, regarding the pricing policy for the water used in electricity generation. Comment. It is very unlikely CEL is going to allow a charge for the water used in electricity generation, saying it could lead to an increase in the end user electricity tariffs. End Comment.

17. Government at the national and local level will be granted rights to use water resources through assignments, subject to periodic review by CONAGUA. The duration of these assignments is still under

review. Private use of water resources to organizations and companies will be granted through concession contracts of a maximum duration of 30 years. These contracts will clearly define use and conservation responsibilities and will require the posting of performance bonds and be subject to audits. Water use permits will be granted to individuals for uses of no more than five years. Block titling will be carried out for existing users who will be placed under one of the three water grant mechanisms. All assignments, concessions, and permits will be granted, managed, and controlled by CONAGUA.

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SALVADORAN ECOLOGICAL UNIT PROPOSAL  
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18. The Salvadoran Ecological Unit (UNES), a left wing NGO, presented an alternative Water Law proposal to the Legislative Assembly for discussion and approval. The spirit of their proposal is to limit any kind of privatization of water services, and focuses on the conservation of water. Contrary to the GOES proposal, their proposal includes regulation of water services.

19. UNES proposes the creation of a Water Commission similar to the GOES proposal, but the election of the members would be made by the Legislative Assembly from a list of experts proposed by local environmental NGOs. Among the responsibilities of this Commission would be water planning, regulation, supervision, conservation and protection. The UNES proposal delves further into environmental protection of water sources, and limits the use of water for industrial, tourism, and electrical generation purposes.

110. The proposal presented by UNES mandates the creation of a National Water Policy that will provide general guidance for sustainable and equitable usage of water, sufficient water supply, and prioritize water used to satisfy basic human needs. The UNES proposal regulates water services such as household consumption, supply for settlements, ecosystem maintenance, agricultural use, electrical generation, industrial usage and tourism. The proposal states that the Government will be the only provider of potable

water in the country and explicitly states the service will not be privatized under any circumstances. The proposal also says the government-owned electric utility (CEL) will only be responsible for electricity generation with water resources, prohibiting any type of concession or privatization of the facilities. The proposal also places a 10-year moratorium on further dam building on the Lempa River to avoid further ecological damage.

11. Comment. When the MARN proposal is presented to the Assembly there will likely be vigorous public debate over the issues of concessions and permitting, which are seen as privatization by the left. MARN officials do not think this will be a deal breaker, as the UNES proposal has not generated any strong discussion about privatization, and MARN believes their draft will be approved, even though there may be some hue and cry from the left. More critical to the passage of the bill will be the acceptance by the business community that they may be charged by CONAGUA for water that is currently free, such as drinking water pumped from wells by ANDA. Said charges will begin to place a value on water, which should lead to more responsible use. It is very unlikely that the proposal presented by UNES will be approved by the Legislative Assembly. Even though they have the support of the main opposition party, the FMLN, they will not get support from the moderate or center right parties. End Comment.

Barclay